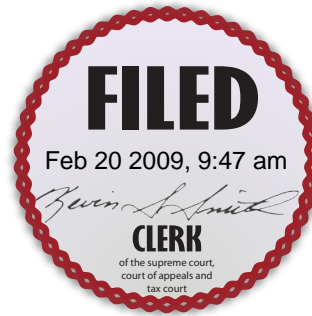


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

A.B.,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 49A02-0806-JV-490
)	
STATE OF INDIANA,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Danielle L. Gregory, Magistrate
Cause No. 49D09-0801-JD-23

February 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent A.B. appeals following the juvenile court’s determination that he committed a delinquent act, specifically, Auto Theft,¹ a Class D felony if committed by an adult. A.B. contends that the evidence is insufficient to support the trial court’s true finding. We affirm.

FACTS AND PROCEDURAL HISTORY

At approximately 11:15 p.m. on January 1, 2008, Terry Pritt was warming up his silver 2007 Ford Taurus before he left his home in Indianapolis to go to work. After starting the Taurus, Pritt went back inside his home to use the restroom. When Pritt came back outside, he noticed that his Taurus “was going through [his] sliding chain link gate and then to the left.” Tr. p. 14. Pritt then “got in [his] truck and tried to pursue the car,” but he “wasn’t quick enough,” so Pritt “came back home and reported the car stolen.” Tr. p. 14.

Approximately one hour later, Indianapolis Metropolitan Police Officer Mike Diehl was dispatched to a possible burglary in progress on Pleasant Run Avenue. As he approached, Officer Diehl observed a “silver Taurus with two ... males in it.” Tr. p. 6. The Taurus matched the description of Pritt’s vehicle, which had been reported stolen from Pritt’s home approximately two or three miles away. Officer Diehl activated his red and blue police lights, whereupon both A.B., who was sitting in the driver’s seat, and the other male, who was sitting in the front passenger seat, “immediately jetted out of the car” and fled northbound. Tr. p. 6. Officer Diehl gave “a couple” verbal “canine announcements that [he]

¹ Ind. Code § 35-43-1-2.5 (2007).

was a police officer and to stop or [he'd] send [his] dog.” Tr. p. 7. A.B. failed to heed Officer Diehl’s warnings, so Officer Diehl released his dog which caught A.B. “about five or six houses up the street.” Tr. p. 7. After A.B. had been apprehended, Officer Diehl confirmed that the vehicle in which A.B. had been sitting was Pritt’s stolen Taurus. Pritt did not know A.B. and had not given him permission to take or possess his Taurus.

On January 3, 2008, the State filed a delinquency petition against A.B., alleging that he had committed acts that would be criminal if he were an adult. Specifically, the State alleged that A.B. committed what would be Class D felony Auto Theft, Class A misdemeanor Resisting Law Enforcement, and Class B misdemeanor Unlawful Entry of a Motor Vehicle. On May 2, 2008, following a denial hearing, the juvenile court adjudicated A.B. a delinquent child for having committed what would be auto theft and resisting law enforcement if he were an adult. A.B.’s challenge on appeal is strictly to the auto theft adjudication.

III. DISCUSSION²

A. Standard of Review

Our standard of review regarding sufficiency of the evidence claims is firmly established. When the State seeks to have a juvenile adjudicated to be a delinquent for committing an act that would be a crime if committed by an adult, the State must prove every element of the crime beyond a reasonable doubt. On appeal, this Court does not reweigh the evidence nor judge the credibility of witnesses, but instead looks to the evidence most favorable to the [adjudication] and to all the reasonable inferences to be drawn therefrom. In other words, we will affirm the [adjudication] if the evidence admitted at trial

² We held oral argument in this case on January 30, 2009 at Heritage Christian High School. We wish to thank counsel for their advocacy and extend our appreciation to the faculty, staff, and students of Heritage Christian for their fine hospitality

contains adequate probative value from which the [trier of fact] could infer guilt beyond a reasonable doubt. Circumstantial evidence is no different than other evidence for this purpose, and standing alone may sufficiently support a[n] [adjudication].

In the Matter of R.L.H. v. State, 738 N.E.2d 312, 315 (Ind. Ct. App. 2000) (citations omitted).

B. Analysis

On appeal, A.B. contends that the evidence is insufficient to support the juvenile court's delinquency adjudication regarding auto theft. "A person who knowingly or intentionally exerts unauthorized control over the motor vehicle of another person with the intent to deprive the owner of: (1) the vehicle's value or use ... commits auto theft, a Class D felony." Ind. Code § 35-43-1-2.5. The phrase "'to exert control over property' means to obtain, take, carry, drive, lead away, conceal, abandon, sell, convey, encumber, or possess property, or to secure, transfer, or extend a right to property." Ind. Code § 35-43-4-1(a) (2007).

It is well-established in Indiana that "the unexplained possession of recently stolen property will support an inference of guilt of theft of that property." *Miller v. State*, 563 N.E.2d 578, 581 (Ind. 1990); *J.B. v. State*, 748 N.E.2d 914, 916 (Ind. Ct. App. 2001) (applying this principle in the context of a recently-stolen motor vehicle). In addition, evidence of flight may be considered with regard to the defendant's guilt or innocence because flight illustrates a consciousness of guilt. *See generally Powers v. State*, 431 N.E.2d 799, 800 (Ind. 1982) (providing that evidence of flight was relevant to show guilt of Defendant's escape charge and a consciousness of guilt of Defendant's burglary and theft

charges). A.B. acknowledges that the unexplained possession of recently-stolen property will support an inference of guilt and concedes that Pritt's vehicle was recently-stolen property. A.B. also concedes that he was sitting in the driver's seat of the vehicle when Officer Diehl approached. A.B. claims, however, that his presence in the vicinity of the vehicle is insufficient to prove that he exerted control over the vehicle.

The undisputed facts establish that A.B. was not merely in the vicinity of the recently-stolen vehicle, but, rather, that he was sitting in the driver's seat, and that his presence in the vehicle was unauthorized and unexplained. We conclude that this evidence, coupled with the inferences that can reasonably be drawn therefrom, is sufficient to establish that A.B. was in possession of the recently-stolen vehicle. To the extent that A.B. argues that a finding that he committed auto theft requires a finding that he exerted unauthorized control over the vehicle in question, we observe that Indiana Code section 35-43-4-1(a) states one way one exerts control over property is by possessing the property. Case law interpreting the auto theft statute applies the inference that possession of a recently-stolen vehicle is sufficient to support a finding of guilt of the theft of the vehicle, and we are not inclined to depart from this well-settled interpretation. A.B.'s flight from the vehicle when approached by Officer Diehl illustrates a guilty conscience. In light of A.B.'s possession of the recently-stolen vehicle and his flight from said vehicle, we conclude that the evidence supports an inference of A.B.'s guilt. Therefore, we further conclude that the evidence was sufficient to support the juvenile court's determination that A.B. committed the delinquent act of auto theft.

The judgment of the juvenile court is affirmed.

CRONE, J., and MAY, J., concur.